

Archibald Primrose, Lord Viscount,
Roseberie in the Kingdom of Scotland,
and the Lady Dorothy his Wife.

Appellants.

James Taylor,
Elizabeth his Wife,
and Samuel Tireman,

Respondents.

The Appellants CASE.

The only Point is, Whether the Appellant shall have INTEREST for his Wife's Portion of 2000 l.

1670. Sept 19. **B**Y a Settlement then made on the Marriage of Everingham Cressey and his first Wife (who had a Portion of 2500 l.) their only Daughter, the Appellant Dame Dorothy, was to have a Portion of 2000 l. to be raised out of the Rents and Profits of the Estate then settled, or by Leasing thereof.

1675. Nov. 1. Birckinholme part of the Premises settled, was Mortgaged to one Tireman for 750 l. which Mortgage is since come to the Respondent Tireman.

1676. May 18. By another Settlement on the Marriage of Mr. Cressey with Elizabeth his Second Wife, the Estate settled on his first Marriage was again settled on himself for Life; and after his Death, as to all (except what limited to the Second Wife for her Jointure) to Trustees for 500 Years, in trust by Lease Mortgage or Sale, to raise the said 2000 l. Portion, and the Money due to Mr. Tireman; That, free from the same, the Second Wife might enjoy her Joynture, which was made of particular Parcels mentioned in the same Settlement, with a Covenant, that the same then were and should continue of the clear yearly Value of 320 l.

1679. August. After Mr. Cressey's Death without Issue by the said Elizabeth his Second Wife, she Intermarried with the Respondent Mr. Taylor. That the Respondents, Mr. Taylor and his Wife, might have the the Benefit of her Joynture, a Bill was by them exhibited into the Court of Chancery against the Appellant Dorothy, then an Infant of 8 Years of Age, and the Trustees for raising her Portion. And to this Bill the Executors of Tireman the Mortgagee, and the Trustees of the Term of 500 Years, mentioned in the said Second Marriage-Settlement, were made Parties.

1685. May 13. First Hearing. The Cause came to be heard, and the Court then declared, That the Portion of the Appellant Dorothy ought in the first place to be raised out of the Profits without Interest, and then the Mortgagee to be satisfied what due to him: And in the last place, the Respondent Mrs. Taylor to have her Joynture after the rate of 325 l. per Annum. And it was Decreed accordingly. And to make the Decree effectual, it was further Decreed, That a Sale should be made for raising the Portion, and the Money due to the Mortgagee: And an Accompt was directed to be taken of what had been raised out of the Estate settled, by the Trustees for the Appellant Dorothy.

1686. May 1. It was certified by the Master in Chancery, to whom the Accompt was referred, That one of the Trustees for the Appellant Dorothy had received of the Profits of the said Estate, 765 l. 7 s. and 6 d. And on the 5th of March 1690, the said Master certified, that there had been so received more, 731 l. 8 s. and 6 d.

1690. March 5. The Appellant the Lord Roseberie, Intermarried with the Appellant Dorothy; and before that time he was a Stranger to the Proceedings in the said Cause; but perceiving that tho' some Endeavours had been made for a Sale of the said Estate, yet the same had not proved effectual; and that Maintenance of his Lady, after the Death of her Father, was insisted on by her Trustee to be allowed him out of the Principal Money of her Portion; and that the same was accordingly allowed: And being advised, that towards her Maintenance, Interest of her Portion ought to be allowed: Thereupon the Appellant the Lord Roseberie applied for a Re-hearing of the said Cause in the said Court of Chancery; which being granted,

1691. July 28. It was Decreed, That 40 l. per Annum should be allowed to the Appellant Dorothy, for her Maintenance, from her Father's Death until she was 17 Years of Age; and from thence Interest of the said 2000 l. at 5 l. per Centum, until her Portion paid; and that the said Maintenance and Interest ought to be made good to her out of the Money in the Trustees Hands, so far as the same would extend. And decreed the same accordingly; and directed the said Maintenance and Interest to be computed by the said Master. And it was ordered, that the Trustee should shew Cause why Interest should not be paid by him for what he had received. And after the Masters Report, the Court would consider how far the said Trust-Estate should stand charged.

1692. June 21. Upon the Trustees shewing Cause, the Respondents Mr. Taylor and his Wife, did insist, that they desired the Trustee should pay no more Interest than he had received, or Profit made of the said Money; and the said Respondents were willing to be bound by his Oath in the Matter: And the Court ordered, That the Trustee should pay such Interest and Profit as he received and made of the Trust-money to be ascertained by his own Oath, to be taken by the said Master.

1693. March 3. The Trustee made Oath, That he made no Interest of the said Trust-money, nor used it otherwise than for Securing thereof, and was always ready to pay according to the Direction of the Court.

Under this last Decree all Parties acquiesced above three Years, and the Master in Chancery being ready to make his Report in pursuance thereof, the Respondents Mr. Taylor and his Wife, obtained a second Re-hearing of the said Cause, and then

1694. March 2. The last Decree was set aside; and it was ordered, that the first Decree should stand. And on the 22d of November 1695, a Petition for a Re-hearing exhibited by the Appellants, was dismissed; and the Decree of the 2d of March 1694, was Signed and Enrolled. And since the Year 1695, until very lately, neither of the Appellants hath been in England.

Note. That during the Proceedings aforesaid in the Court of Chancery, precedent to the Intermarriage of the Appellants, the Appellant Dorothy was an Infant under the Age of 21 Years, and therefore it is humbly hoped, That no Default shall be imputed to her whilst an Infant, so as to deprive the Appellants of the Interest of the said 2000 l. Portion. And the said Portion being secured by a Term of 40 Years, Prior to the Respondents Title; and there being no Objection against the same Term in Point of Title; the said Portion might have been raised by Vertue of the said first Decree, and put out at Interest for the Benefit of the Appellant Dorothy. Whereas by the said last Decree, the Appellants are not only deprived of any Interest for the said 2000 l. but the same Principal Sum hath been considerably lessened by the Maintenance of the Appellant Dorothy, precedent to her Marriage: And the second Wife for her Joynture, carrieth away the Inheritance of the Estate from the Family.

Reasons for Interest. There is great Reason the Appellant should have Interest for her Portion. She is Heir at Law, and disinherited, and has nothing in Lieu of it but this Portion.

The Trustees had Power to raise the Portion immediately after the Death of the Father, and the Estate was of Value sufficient, and the Method of Raising sufficient to raise it presently, viz. a Term of 40 Years, with Power by Leasing to raise it.

No Maintenance for the Daughter in the mean time.

The Chancery never allows the Principal to be lessened and spent in Maintenance of an Infant.

The Respondents have no Equity against the Appellant; their Title being long subsequent to the Appellants; and they had notice of the Appellants Incumbrance, and have the whole Inheritance to make them Recompence and Satisfaction.

No Interest could be had from the Trustee, who made Oath he had made none; and the Respondents submitted to be bound by his Oath: Which Submission amounts to a Consent to the said Decree of the 28th of July 1691. and an Acquiescence therein; and they ought not to have been admitted to a farther Re-hearing of the said Cause, especially when in pursuance of the said Decree, the Respondents submitted to propose Purchasers.

Therefore the Appellants humbly Pray, That the said Last Decree may be reversed; And that there may be allowed, to the Appellants Interest for the said 2000 l. from the Death of the Appellant Dorothy's Father; Or, at least, Maintenance and Interest, according to the said Decree of the 28th of July 1691. to be raised out of the said Estate.

William Dobyns.
P. Crawford.